

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CAROLYN TOLTON)	CASE NO. 1:08-cv-2588
)	
on behalf of herself)	JUDGE BOYKO
and all others similarly situated,)	
)	MAGISTRATE JUDGE McHARGH
Plaintiff,)	
)	
vs.)	
)	
COUNCIL FOR ECONOMIC)	
OPPORTUNITIES IN GREATER)	
CLEVELAND)	
)	
Defendant.)	

**FINAL ORDER AND JUDGMENT APPROVING CLASS AND COLLECTIVE ACTION
SETTLEMENT PURSUANT TO CIVIL RULE 23(E) AND 29 U.S.C. §216(B)**

This class and collective action is before the Court on the parties' Joint Motion to Approve Settlement and Dismiss With Prejudice ("Motion for Final Approval"), which incorporates by reference *Plaintiff's Unopposed Motion and Memorandum in Support of (1) Preliminary Approval of Class and Collective Action Settlement and Petition for Attorneys' Fees; (2) Provisional Certification of Settlement Classes; (3) Directing Distribution of Notice of Wage/Hour Class and Collective Action Settlement and Claims Procedure; and Opportunity to Opt-Out of and Object to Settlement; and (4) Setting Hearing for Final Approval of Settlement* ("Motion for Preliminary Approval"). The Motion asks the Court to grant final approval of the proposed settlement of this class action ("Proposed Settlement") upon the terms and conditions set forth in the Settlement Agreement. For good cause shown, and upon the whole of the record

and proceedings in this litigation, the Court grants final approval of the Proposed Settlement and enters this Final Order and Judgment.

1. On October 31, 2008, Tolton filed a collective action complaint in the Northern District of Ohio, Eastern Division, against CEOGC, asserting violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, as a result of Defendant’s practices and policies of misclassifying Plaintiff and other similarly-situated employees as “exempt” employees, and not paying them overtime compensation at the rate of one and one-half times their regular rate of pay for the hours they work over 40 in a workweek. On March 19, 2009, Tolton filed an Amended Complaint containing similar allegations under the Ohio Minimum Fair Wage Standards Act (“OMFWSA”), O.R.C. §§ 4111.01-99.

2. Plaintiff is an individual who was employed by Defendant as a family service worker. The Action alleges that Defendant violated the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, the Ohio Minimum Fair Wage Standards Act, Ohio Rev. Code §4111.01 *et seq.* on behalf of herself and other similarly situated employees. Plaintiff sought recovery of unpaid wages, attorneys’ fees, costs and other relief. Defendant denies these charges and believes that it has properly paid its family service workers.

3. Subject to final approval by the Court pursuant to Civ. R. 23(E) and 29 U.S.C. §216(b), Plaintiff and Defendant have agreed to settle this class action upon the terms and conditions set forth in the Settlement Agreement attached to the Motion for Final Approval. The Proposed Settlement will resolve this case and the claims alleged in the Federal Court Lawsuit.

4. The Proposed Settlement was reached after several months of complex litigation and extensive negotiations. The risks involved in litigation were substantial for both sides. The

Proposed Settlement will eliminate the risks of the litigation process and make substantial cash payments available to all class members.

5. Under the proposed method of distribution, all Class Members will receive a proportionate share of the settlement based on the number of weeks the Class Member was employed during the relevant Claims Period, from March 31, 2007 through March 31, 2009, subject to applicable income and payroll taxes and withholding.

6. On May 27, 2009, the Court granted Preliminary Approval of Settlement (“Preliminary Approval Order”). The Preliminary Approval Order approved the certification of this case as a class action, appointed class counsel, and approved named plaintiff Carolyn Tolton as class representative of the class, as defined in the Class Definition set forth in the attached Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing (“Notice”). The Preliminary Approval Order further granted preliminary approval of the proposed class and collective action settlement, finding preliminarily that the Proposed Settlement was fair, adequate, and reasonable.

7. To determine whether final approval of the Proposed Settlement should be granted, the Court scheduled a Fairness Hearing at 2:00 p.m. on Monday, August 24, 2009. The Court directed that class members be given notice of the Proposed Settlement and of the Fairness Hearing, in the form of the Notice approved by the Court.

8. With their Motion for Final Approval, the parties submitted a Declaration of Distribution of Class Notice, attesting that the Notice approved by the Court in its May 27, 2009 Preliminary Approval Order was distributed to class members.

9. The Fairness Hearing was convened on August 24, 2009.

10. The Court has reviewed the steps and procedures taken pursuant to the Preliminary Approval Order, has conducted the Fairness Hearing, and has given due consideration to all submissions filed or presented in support of the Proposed Settlement, including presentations made during the course of the Fairness Hearing.

11. The Court finds that notice of the Proposed Settlement was given to class members in accordance with the Preliminary Approval Order. The Court further finds that the Notice thereby given to class members was reasonable and the best notice practicable, and satisfied all of the requirements of Civ. R. 23 and due process.

12. The Court finds that the Proposed Settlement, upon the terms and conditions set forth in the Settlement Agreement, is fair, adequate, and reasonable. The Court accordingly grants final approval of the Proposed Settlement, upon such terms and conditions, and orders that the Proposed Settlement be concluded according to its terms and conditions and as prescribed herein.

13. The Court finds that the proposed method of distributing the settlement proceeds to class members is fair and reasonable. The Court directs that the net proceeds of the settlement, after deduction of the fees, expenses, and class representative awards herein approved by the Court, be distributed to the class under the terms described above.

14. The Court finds that the proposed special distribution to the class representative in recognition of her service to the class is fair and reasonable. The Court directs that a special distribution in the amount of One Thousand Dollars (\$1,000.00) be made to class representative Caroyln Tolton in recognition of her service to the class.

15. The Court finds that the proposed distribution of attorneys' fees to class counsel in the amount of Fifteen Thousand Dollars (\$15,000.00) and Five Hundred Twenty Seven Dollars and Twenty Three Cents (\$527.23) in expenses is fair and reasonable. The fee award requested by class counsel is within the range of attorneys fees customarily approved in class actions in both the Ohio and federal systems. The Court approves such distribution and directs that it be made 31 days after the Fairness Hearing.

16. The court appoints Brian Gleisser, the senior vice-president for CEOGC, to serve as Administrator of the Settlement and to make the payments ordered by this Court to the members of the class.

17. This class and collective action is hereby dismissed with prejudice, outstanding court costs to be paid by defendants.

18. This Final Order and Judgment constitutes a final and complete adjudication of the matters presented herein, and the Court expressly determines that there is no just reason for delay pursuant to Civ. R. 54(B). Without affecting the finality of this Final Order and Judgment, the Court retains jurisdiction to determine such matters as may arise under the Proposed Settlement or this Final Order and Judgment.

IT IS SO ORDERED:

s/Christopher A. Boyko
JUDGE BOYKO

DATED this 26 day of August, 2009.